

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

Robert Dedmon, §  
§  
*Plaintiff*, § CIVIL ACTION NO. 4:21-cv-03371  
§  
vs. § Jury Demand  
§  
Shell Exploration & Production §  
Company and Shell Trading §  
Services Company, §  
§  
*Defendants*. §

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**MEMORANDUM OF LAW FOR JOINT PRETRIAL ORDER**

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This memorandum is intended to identify and address “the legal propositions that are necessary to the disposition and relief sought in the case, with identification of those which aren’t in dispute,” in accord with Paragraph 21(a) of the Court’s Procedures.

Most of the propositions necessary to the disposition of this case are factual ones for a jury to determine [like liability and compensatory damage] or this court to determine [like attorneys’ fees and costs]—rather than legal ones. But there are these legal questions: (1) whether defendants are equitably estopped from relying on any limitations defense [addressed in summary judgment briefing in this case]; (2) backpay [which, technically, is a

matter of equitable relief for the Court, though often tried to a jury for its advisory opinion]; and (3) injunctive relief. These legal questions are all in dispute.

On what adverse action means: *Muldrow v. St. Louis*, 601 U.S. 346, 365 (2024) changed how courts analyze discrimination claims. It ruled that just “some harm respecting an identifiable term or condition of employment” is enough to make a discriminatory act actionable. *Muldrow*, 601 U.S. at 355. Discrimination need only leave an employee “worse off respecting employment terms or conditions.” *Id.* Harm no longer needs to be *significant* or *material* or *serious* or *substantial*.<sup>1</sup>

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<sup>1</sup> See *Muldrow*, 601 U.S. at 355 (what an employee “does not have to show, according to the relevant text, is that the harm incurred was ‘significant.’ Or serious, or substantial, or any similar adjective suggesting that the disadvantage to the employee must exceed a heightened bar.”).

Respectfully submitted,

*/s/ Amy Gibson*

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Ms. Amy E. Gibson  
Attorney-in-Charge  
Texas State Bar No. 00793801  
Southern District Bar No. 20147  
[amy@gwfirm.com](mailto:amy@gwfirm.com)

Mr. David L. Wiley  
Of Counsel  
Texas State Bar No. 24029901  
Southern District Bar No. 34134  
[david@gwfirm.com](mailto:david@gwfirm.com)

Gibson Wiley PLLC  
1500 Jackson Street #109  
Dallas, Texas 75201-4923  
T: (214) 522-2121  
F: (214) 522-2126

*and*

Ms. Amanda C. Hernandez  
Of Counsel  
Texas State Bar No. 24064411  
Southern District Bar No. 1531045  
[amanda@ahfirm.com](mailto:amanda@ahfirm.com)

AH Law, PLLC  
5718 Westheimer, Suite 1000  
Houston, Texas 77057  
T: (713) 588-4359  
F: (281) 572-5370

*Attorneys for Robert Dedmon*